

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 15-20743

Honorable David M. Lawson

DUANE LETROY BERRY,

Defendant.

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**ORDER DENYING THE DEFENDANT'S MOTION TO DISMISS**

Defendant Duane Letroy Berry, although represented by counsel, has filed a motion on his own seeking dismissal of the criminal complaint against him. Mr. Berry's motion consists of a single sentence, which requests "**Immediate** dismissal of the aforementioned Criminal Complaint based on False Statements and Conspiracy against Rights," and accompanied by his affidavit. After Mr. Berry filed his motion, an indictment was returned against him. The complaint, therefore, has no further legal significance in this case.

"[T]he Indictment is the charging instrument in [a] criminal matter and it supersedes the Criminal Complaint." *United States v. Houston*, 2013 WL 3975405, at \*2 (E.D. Tenn. July 29, 2013) (citing 1 Charles Alan Wright & Andrew D. Leipold, Fed. Prac. & Proc. Crim. § 41 (4th ed.)). "If an indictment has been returned or an information filed prior to the arrest, a warrant may be issued on this ground alone pursuant to Rule 9. In such a case, probable cause has already been established and there is no need for a [criminal] complaint." 1 Charles Alan Wright & Andrew D. Leipold, Fed. Prac. & Proc. Crim. § 41 (4th ed.); *see also United States v. Smith*, 2001 WL 420368, at \*1 (W.D. Va. Jan. 23, 2001) (finding the return of the indictment against the defendant mooted the basis for the defendant's motion to dismiss the criminal complaint).

Aside from the failure of the motion to state grounds that might warrant dismissal of the complaint, the motion does not seek action by the Court which would provide the defendant with any meaningful relief at this stage of the proceedings.

Accordingly, it is **ORDERED** that Mr. Berry's motion to dismiss the indictment [dkt. #11] is **DENIED**.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: December 11, 2015

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 11, 2015

s/Susan Pinkowski  
SUSAN PINKOWSKI